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A Law Corporation

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NTKN, INC. and HUNG KY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I

TRENDTEX FABRICS, LTD.,
Plaintiffs,

vs.

NTKN, INC., a Hawaii corporation;
HUNG KY, an individual; SHAKA
TIME, INC., a Hawaii corporation;
TROPICOLIC, INC., a Florida
corporation,
Defendants.

NTKN, INC., a Hawaii corporation,
Counterclaim Plaintiff,

vs.

TRENDTEX FABRICS, LTD.,
a Hawaii corporation,
Counterclaim Defendant.

Case No. 1:22-cv-00287-MWJS-KJM

Honorable Micah W.J. Smith

**DECLARATION OF LENA N.
BACANI**

DECLARATION

I, Lena N. Bacani state and declare as follows:

1. I am a partner in the law firm, Loza & Loza LLP (“Loza”), and am admitted before this Court *pro hac vice*. I am counsel for NTKN, Inc. and Hung Ky (collectively, “NTKN”) and have personal knowledge of the facts set forth herein.

2. Attached hereto as Exhibit 1 is a redacted version of the settlement agreements between Plaintiffs and NTKN’s former co-defendants in the present action. NTKN has filed a Motion to File Under Seal, or in the Alternative, File Publicly Settlement Agreements. (Dkt. 174.)

3. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the deposition of Hung Ky.

4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts of the Rule 30(b)(6) deposition of Dwight Hamai.

5. Attached hereto as Exhibit 4 is a true and correct copy of excerpts of NTKN’s First Set of Requests for Production of Documents.

6. Attached hereto as Exhibit 5 is a true and correct copy of excerpts of the expert report of Linda Bradley.

7. Attached hereto as Exhibit 6 are true and correct copies of several examples of Trendtex and HawaiiPrint invoices from purchases of fabrics with the subject surface designs purchased by NTKN’s predecessor, Ky’s International Fabrics, Inc.

8. NTKN was never informed by counsel for Trendtex Fabrics and Trendtex Holding that Trendtex Fabrics has assigned the the rights to the asserted copyrights until after Plaintiffs filed the Second Amended Complaint.

I declare under penalty of law that the foregoing is true and correct to the best of my knowledge.

DATED: March 22, 2024.

A handwritten signature in cursive script that reads "Lena Bacani".

Lena Bacani

EXHIBIT 1

DOCUMENT FILED UNDER SEAL

EXHIBIT 2

1 APPEARANCES:

2 For Plaintiffs:

3 EDWARD T. FU, ESQ.

4 The DuBoff Law Group, PC

5 6665 SW Hampton Street, Suite 200

6 Portland, Oregon 97223-8357

7
8 LEO Y. SHIMIZU, ESQ -- via speakerphone

9 Go Law Office LLC

10 1441 Kapiolani Boulevard, Suite 910

11 Honolulu, Hawaii 96814

12 -- via videoconference --

13
14 For Defendant NTKN, Inc. and Hung Ky:

15 REX Y. FUJICHAKU, ESQ.

16 Bronster Fujichaku Robbins

17 Pauahi Tower, Suite 2300

18 1003 Bishop Street

19 Honolulu, Hawaii 96813

20 LENA N. BACANI, ESQ.

21 Loza & Loza

22 305 North 2nd Avenue, Suite 127

23 Upland, California 91786-6064

24 -- via videoconference --

1 THE REPORTER: Our disclosure is complete and available for
2 everyone to review. It will be attached to the deposition
3 transcript.

4 THE VIDEOGRAPHER: This is the deposition of
5 30(b)(6) witness, in the matter of Trendtex Fabrics
6 Ltd., et al. versus NTKN, Inc., et al.

7 We are located at Chong, Nishimoto, Sia, Nakamura,
8 & Goya; 1003 Bishop Street, Suite number 2500; Honolulu,
9 Hawai'i.

10 My name is Jason Moore, video specialist for
11 Certified Legal Video Services.

12 Will counsel please state your names.

13 MR. FU: Edward Fu for the Plaintiffs.

14 THE INTERPRETER: Candy Choi, Cantonese
15 interpreter for Mr. Ky.

16 THE WITNESS: Hung Ky from NTKN
17 Incorporation.

18 MR. FUJICHAKU: This is Rex Fujichaku,
19 Counsel for NTKN, Inc. and Mr. Ky. And also on the
20 line is Lena Bacani, counsel for NTKN and Mr. Ky.

21 MR. GOTO: Hi, Steve Goto, Counsel for
22 Counterclaim Defendant, Trendtex Holdings, LLC.

23 THE VIDEOGRAPHER: Thank you, Counsel.

24 MR. FU: Oh, and we also have Leo Shimizu on
25 the line, also for the Plaintiffs as well.

1 company, why then did you switch over to NTKN?

2 A Because changing to a new name will make all
3 the documents more clear, not confusing.

4 Q And so was everything else regarding business
5 operations essentially unchanged?

6 MR. FUJICHAKU: Objection; vague and
7 ambiguous.

8 BY MR. FU

9 Q All right. Did you -- so as a result of
10 switch -- of the transition to NTKN, was there any
11 change to the garments that were made?

12 A No.

13 Q Were there any -- did the inventory -- any
14 remaining inventory or supplies from the Ky
15 corporation carry over to NTKN?

16 A Correct.

17 Q And were all the employees the same?

18 A Different, but they all gone.

19 Q How about the customers, did they change?

20 A No.

21 Q And how about liabilities?

22 A What do you -- what kind of liability?

23 Q Did the business have any debts or other
24 financial obligations that carried over?

25 MR. FUJICHAKU: Objection; calls for a legal

1 A Me. I decide.

2 Q Was this also -- did you also make these same
3 decisions at the Ky's corporation?

4 A No. My ex-wife decide.

5 Q And so what was -- what -- what duties did
6 you perform at the old Ky's corporation then?

7 A I does -- I did sales.

8 Q Are you current -- are you currently involved
9 in the garment business, clothing business, through
10 any other companies aside from NTKN?

11 A Can you elaborate a little bit more clearly.

12 Q First, do you have any -- any side companies,
13 or do you make garments through any other company
14 that's not related to NTKN?

15 A No.

16 Q So it sounds like at least some of the
17 supplies, you know, in your inventory may have -- you
18 know, some of the garments may have carried over from
19 -- from the Ky's corporation to NTKN. Do you have any
20 objection if I sort of refer to them sort of
21 collectively as Ky or would you prefer -- or do you --
22 or would that be inaccurate?

23 MR. FUJICHAKU: Objection; I think that
24 conflation may be confusing for the record, so vague
25 and ambiguous.

1 and then sell inventory?

2 A We will do each size -- we will do 10 for
3 each size. And then if somebody order, then we will
4 -- we have the products for them.

5 Q Has NTKN or the Ky's corporation, did they
6 ever buy another garment maker's unused fabric?

7 A No.

8 Q So if you have extra fabric that, you know,
9 hasn't -- you know, no one's ordered it in a while, do
10 you ever throw it away?

11 A No. Just it will be hang around in the
12 warehouse.

13 Q So, does it just stay in the warehouse
14 forever until it's used?

15 A Yes. I have fabric that is over 20 years is
16 still there.

17 Q I hope the rats and the moths don't get to
18 it.

19 A No, just the ants.

20 Q Okay. All right. So, but are you aware that
21 you gave us some -- provided us with some photographs
22 of fabric rolls?

23 A Yes.

24 Q So Exhibit 2, so this is a composite we made
25 of an image and of the properties from the original

EXHIBIT 3

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII

3 - - -

4 TRENDTEX FABRICS, INC., A HAWAII) Case No.:
5 CORPORATION; AND TRENDTEX HOLDING, LLC,) 1:22-
cv-00287-
6 A HAWAII LIMITED LIABILITY COMPANY;) LEK-KJM
7 PLAINTIFF,)
8 VS.)
9 NTKN, INC., A HAWAII CORPORATION; HUNG)
10 KY, AN INDIVIDUAL; SHAKA TIME, INC., A)
11 HAWAII CORPORATION; LEILANI'S ATTIC,)
12 INC., A CALIFORNIA CORPORATION; HAWAII)
13 HANGOVER, LLC, A MISSOURI LIMITED)
14 LIABILITY COMPANY; AND MARK MADL, AN)
15 INDIVIDUAL D/B/A/ CITIES FASHION;)
16 DEFENDANTS.)
17 _____
18 NTKN, INC., A HAWAII CORPORATION,)
19 COUNTERCLAIM PLAINTIFF,)
20 VS.)
21 TRENDTEX FABRICS, LTD., A HAWAII)
22 CORPORATION,)
23 COUNTERCLAIM DEFENDANT.)

20 VIDEO-RECORDED REMOTE DEPOSITION
21 OF DWIGHT KATSUTOSHI HAMAI
22 TUESDAY, FEBRUARY 27, 2024, 11:00 A.M.
23 Reported by Patricia Gray-Conrad, CSR No. 12633

8 color of the strike-off that the customer saw is the
9 color that is ordered by -- or is ordered from the
03:17:25 10 manufacturer?

11 A It varies. Sometimes the customer maintains
a
12 portion of the strike-off for verification.

13 Q Does Trendtex ever do any of the
verification?

14 A Yes.

03:17:44 15 Q And when is that done?

16 A When we receive the printed fabric.

17 Q Are you talking about the final rolls of
18 fabric?

19 A Sorry. No.

03:18:01 20 Q Can you clarify your answer? When you say
21 when you receive the fabric, what are you referring to?

22 A We receive what we call hanger samples or
23 printed samples from the supplier.

24 Q And how much fabric is in the hanger samples?

03:18:28 25 A Maybe 15-by-22 possibly or so.

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03:18:39 1 Q Is that in inches or something else?

2 A Inches.

3 Q And are those hanger samples shipped to
4 Trendtex or to the customer?

03:18:57 5 A Trendtex.

6 Q And what does Trendtex do with those samples?

7 A We offer a portion to the customer.

8 Q How large of a portion?

9 A 15-by-22 possibly, inches. It's on a hanger
03:19:18 10 sample, what we call a hanger sample.

11 Q And does Trendtex keep a portion of that
12 sample?

13 A Yes.

14 Q And what portion?

03:19:30 15 A We normally keep three or four hanger
samples.

16 Q You keep three or four. So how many hanger
17 samples do you typically get from the manufacturer for
a
18 given color and a given surface designs?

19 A It varies. It varies a lot.

03:19:57 20 Q Did you usually get more than one?

21 A Yes.

22 Q And does Trendtex do anything with those
23 hanger samples?

24 A We offer some of them to the customer.

03:20:15 25 Q What do you do with the others that you don't

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03:20:18 1 give to the customer?

2 A It hangs in our archives.

3 Q And for how long?

4 A As long as we can keep them.

03:20:31 5 Q So for the Ky International fabrics that were
6 purchased from Trendtex Fabrics, do you have those
7 hanger samples in your archives?

8 A Yes.

9 Q And how many?

03:20:48 10 A Could be two or three.

11 Q Two or three per surface design?

12 A Yes. It could be less if it's a reprint.

13 Q And why is that?

14 A Because the colors are usually the same.

03:21:12 15 Q Do you save hanger samples for reprints?

16 A Yes.

17 Q And do you have hanger samples for all of Ky
18 International's reprints?

19 A I believe so.

03:21:32 20 Q And have they been produced in the
litigation?

21 A Excuse me?

22 Q Have they been produced? Did you provide
your

23 lawyers with those samples?

24 MR. GOTO: Objection. Steve Goto.

03:21:48 25 THE COURT REPORTER: I can't hear you.

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03:21:50 1 MR. GOTO: Again, Steve Goto, objection. This

2 witness is not designated to respond to Question 25 on

3 the Fabrics' notice and 20 on the Holding;s notice.

4 THE COURT REPORTER: 20 on the what?

03:22:06 5 MR. GOTO: Holding's notice.

6 THE COURT REPORTER: Thank you. Thank you.

7 BY MS. BACANI:

8 Q This is also related to the transactions

9 between Trendtex or Hawaiiiprint and NTKN?

03:22:20 10 MR. GOTO: The question was specifically

11 production.

12 THE COURT REPORTER: I'm sorry. What was it,

13 Counsel?

14 MR. GOTO: You can rephrase. The question was

03:22:26 15 specifically production. You can rephrase.

16 THE COURT REPORTER: Thank you.

17 MS. BACANI: And then I would just, again, caution
18 objection against speaking objections. You can make the
19 to scope without providing a long speaking objection.
03:22:44 20 Okay.

21 BY MS. BACANI:

22 Q All right. Let me ask you again, Mr. Hamai.
23 So for the NTKN or, I guess they were Ky
24 International samples, how many samples did you provide
03:23:02 25 in the litigation?

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03:23:08 1 A I'm not sure.

2 Q Did you search for samples?

3 A Yes.

4 Q And did you find any samples?

03:23:17 5 A Yes.

6 Q How many would you say?

7 MR. DUBOFF: Objection; calls for speculation.

8 Answer it if you can.

9 THE WITNESS: One sample at least.

03:23:29 10 BY MS. BACANI:

11 Q One sample total?

12 A For each surface design.

13 Q And so is that 26 samples?

14 A Yes.

03:23:48 15 Q And what about for the colors did you provide
16 a sample for each color?

17 A Of the 26 designs, yes.

18 Q And you had all of those colors in your
19 archives?

03:24:06 20 A Yes.

21 Q And did you have different colors for each
22 surface designs sir?

23 A Possibly, yes.

24 Q When you say possibly you don't recall?

03:24:28 25 A Well every design desire differ comes in

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03:24:32 1 different color ways.

2 Q And are all of those color ways strike that.

3 Are all of the hanger samples manufactured by the same
4 manufacturer?

03:24:47 5 A No.

6 Q Are all of the surface designs strike that

EXHIBIT 4

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Attorneys for Defendants/Counterclaim Plaintiff

NTKN, INC. and HUNG KY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

TRENDTEX FABRICS, LTD., a Hawaii
Corporation; and TRENDTEX HOLDING,
LLC, a Hawaii limited liability company;

Plaintiffs,

vs.

NTKN, INC., a Hawaii corporation; HUNG
KY, an individual; SHAKA TIME, INC., a
Hawaii corporation; LEILANI'S ATTIC,
INC., a California corporation; and HAWAII
HANGOVER, LLC, a Missouri limited
liability company; MARK MADL, an
individual D/B/A CITIES FASHION;

Defendants.

NTKN, INC., a Hawaii corporation,

Counterclaim Plaintiff,

vs.

TRENDTEX FABRICS, LTD., a Hawaii
corporation,

Counterclaim Defendant.

Case No. 1:22-cv-00287-LEK-KJM

**DEFENDANT NTKN, INC.'S FIRST SET
OF REQUESTS FOR PRODUCTION TO
PLAINTIFF TRENDTEX FABRICS,
LTD.**

REQUEST NO. 129: All documents or communications stating or otherwise indicating that the fabric sold by You to NTKN that displayed the 73285 Surface Design was completely exhausted before the manufacture of the garments sold by NTKN from January 2019 until the present that allegedly displayed the same or similar design.

REQUEST NO. 130: All documents or communications stating or otherwise indicating that the fabric sold by You to NTKN that displayed the 73106 Surface Design was completely exhausted before the manufacture of the garments sold by NTKN from January 2019 until the present that allegedly displayed the same or similar design.

REQUEST NO. 131: All licenses, contracts, or other agreements granting rights in U.S. Copyright Registration No. VAu 1-104-076 to any person or entity.

REQUEST NO. 132: All licenses, contracts, or other agreements granting rights in U.S. Copyright Registration No. VAu 1-104-023 to any person or entity.

REQUEST NO. 133: All licenses, contracts, or other agreements granting rights in U.S. Copyright Registration No. VAu 1-104-025 to any person or entity.

REQUEST NO. 134: All licenses, contracts, or other agreements granting rights in U.S. Copyright Registration No. VAu 1-107-464 to any person or entity.

REQUEST NO. 135: All licenses, contracts, or other agreements granting rights in U.S. Copyright Registration No. VAu 1-190-261 to any person or entity.

REQUEST NO. 136: All licenses, contracts, or other agreements granting rights in U.S. Copyright Registration No. VAu 624-818 to any person or entity.

REQUEST NO. 137: All licenses, contracts, or other agreements granting rights in U.S. Copyright Registration No. VAu 635-755 to any person or entity.

REQUEST NO. 138: All licenses, contracts, or other agreements granting rights in U.S. Copyright Registration No. VAu 486-537 to any person or entity.

REQUEST NO. 139: All licenses, contracts, or other agreements granting rights in U.S.

Copyright Registration No. VAu 595-752 to any person or entity.

REQUEST NO. 140: All licenses, contracts, or other agreements granting rights in U.S.

Copyright Registration No. VAu 554-340 to any person or entity.

REQUEST NO. 141: All licenses, contracts, or other agreements granting rights in U.S.

Copyright Registration No. VAu 520-767 to any person or entity.

REQUEST NO. 142: All licenses, contracts, or other agreements granting rights in U.S.

Copyright Registration No. VAu 1-104-074 to any person or entity.

REQUEST NO. 143: All licenses, contracts, or other agreements granting rights in U.S.

Copyright Registration No. VAu 565-372 to any person or entity.

REQUEST NO. 144: All licenses, contracts, or other agreements granting rights in U.S.

Copyright Registration No. VAu 1-185-736 to any person or entity.

REQUEST NO. 145: All licenses, contracts, or other agreements granting rights in U.S.

Copyright Registration No. VAu 1-069-408 to any person or entity.

REQUEST NO. 146: All licenses, contracts, or other agreements granting rights in U.S.

Copyright Registration No. VAu 497-009 to any person or entity.

REQUEST NO. 147: All licenses, contracts, or other agreements granting rights in U.S.

Copyright Registration No. VAu 1-069-405 to any person or entity.

REQUEST NO. 148: All licenses, contracts, or other agreements granting rights in U.S.

Copyright Registration No. VAu 1-823-989 to any person or entity.

REQUEST NO. 149: All licenses, contracts, or other agreements granting rights in U.S.

Copyright Registration No. VAu 1-823-995 to any person or entity.

REQUEST NO. 150: All licenses, contracts, or other agreements granting rights in U.S.

Copyright Registration No. VAu 1-104-092 to any person or entity.

EXHIBIT 5

EXPERT REPORT OF LINDA BRADLEY

Trendtex Fabrics, Ltd.; Trendtex Holding LLC

v.

NTKN, Inc.; Hung Ky; Shaka Time, Inc.; Leilani's Attic, Inc.; Hawaii Hangover, LLC

Case No. 1:22-cv-00287 (District of Hawaii)

I, Linda A. Bradley, hereby state as follows:¹

I. Qualifications

1. I received a BA in Home Economics (minor in Anthropology) in 1970 from California State University, Chico. In 1980, I received an MA in Human Ecology with a focus on clothing and culture. I completed additional graduate work in Sociology at the University of California (Davis) where I focused on cultural identity and historic/comparative research methods. This resulted in another MA in 1988 and a PhD in 1992.
2. I have taught at the University level for over 40 years (including 20 years as a tenured Professor prior to my retirement as Professor Emerita). I focused on courses in apparel merchandising, design, and textiles. My teaching experience includes over 10 years at the University of Hawaii where I concentrated on Hawaiian culture and how it is expressed in the designs of textiles and apparel design. I developed several courses on textiles and clothing directed to preparing students to work in Hawaii's Aloha attire industry. During this time, I wrote *Aloha Attire: Hawaiian Dress in the Twentieth Century*, a comprehensive text on the history of Hawaiian textiles and the wide range of aloha attire. I also co-wrote the award-winning book *The Art of the Aloha Shirt* during this period. At the University of Hawaii, I was the Curator of the Historic Costume and Textiles Collection.

¹ It is my understanding (based on representations from NTKN's counsel), that Trendtex has not provided certain information or documents requested by NTKN. Such information and documentation may be material and may impact my analysis. I am basing my opinions expressed in this report on the information identified herein. Should additional information and documentation become available, I reserve the right to amend or supplement this Report.

- “Rather, it seems clear that Hung Ky has taken his business, along with the Plaintiff’s intellectual property, to another printer.” [Young Report, ¶ 105].
- “Side by side images throughout this report provide irrefutable evidence that all twenty-six of the Plaintiff’s designs were infringed.” [Young Report, ¶ 106].
- “The Defendant’s designs are clearly the creative and intellectual property of the Plaintiff.” [Young Report, ¶ 106].
- “[I]t is also clear that while using the same intellectual property, products sold by the Defendant are not the result of the Plaintiff’s screens.” [Young Report, ¶ 107].
- “[T]he design is clearly Plaintiff’s protected intellectual property.” [Young Report, ¶ 108].

37. Ms. Young’s expert report is filled with numerous statements like the examples above that express ultimate facts or legal conclusions. Ms. Young does not explain her reasoning, support, or analysis methodology she used to come to her conclusions of copyright infringement and scope of intellectual property rights, or any of the corresponding legal standards or tests. She also does not identify particular elements in each of the Subject Designs which may, or may not be, subject to copyright protection.

B. Ms. Young’s Report fails to address or account for how the design and colorway selection process may result in alternative colorways.

38. It is common industry practice that, once a design is finalized, the next step in production is to choose a group of possible colorways for the garments that will feature the design. Often, manufacturers select multiple colorways for a given design, and will print yardage for each colorway for consideration. These are referred to in the industry as “samples.” Manufacturers often select a subset of the printed colorway samples to go into full production and enter the chosen production colorways into the print record or print history. Typically, the unused samples will be set aside. This excess production is often unaccounted for in the print history.

39. This process may result in sample or excess fabric that may not appear on a Print History and may not have otherwise been put into production by

the manufacturer. Producing garments from this fabric may result in a colorway that was not widely produced by the manufacturer but that nonetheless was printed by the manufacturer using the manufacturer's screen.

40. Excess production also comes from miscommunication between the purchaser and the producer as the purchaser tries to explain what is wanted in design and color. It can be particularly troublesome if there is a difference in language between the parties. There may be no record of these excess fabrics at all. If there is a record in a print history, it may show up as a "discontinued" or "cancelled" order and may result in excess fabric in a colorway that is not otherwise intended to be available to be ordered by garment manufacturers.
41. Regardless of the case of the excess production, such fabric is rarely wasted. It is not uncommon for the fabric to be provided to or sold to the purchaser of the intended colorways.
42. I understand from NTKN's CEO, Hung Ky, that NTKN follows this common industry practice in Hawaii. Specifically, Mr. Ky would select 5-7 test colors for a given design. Trendtex would then print the chosen designs on fabrics using the chosen colorways, creating samples for Mr. Ky's consideration. After reviewing the samples, NTKN would place orders with HawaiiPrint or Trendtex for a selected subset of colorways. Trendtex would send the designs to other companies overseas to print the fabrics, which would be packed in boxes and delivered to NTKN.
43. I further understand from Mr. Ky that the precision of designs and fabrics was not consistently maintained throughout the order history, meaning that there could be variations in design, fabric composition and colors between samples, production fabrics, and reorders ordered from the same source.
44. It is important to understand that the way most of Hawaii's apparel companies have operated is quite different from those on the US Mainland. Most Hawaiian apparel companies have been very small with only a handful of employees and garment production was sent out to independent contractors. Agreements often were made with a handshake. Mr. Ky's deposition testimony regarding how he conducts business, and has done



for decades—with limited records and documentation—is consistent with how the small mom & pop apparel companies in Hawaii have operated.

C. Ms. Young’s Report fails to address or account for NTKN’s inconsistent and mistaken labelling of colorways.

45. NTKN’s system for labelling the colorways for its fabrics is inconsistent and, at times, inaccurate. As a result, the written description or identification of the colorway for a particular garment produced by NTKN may not match the actual colorway for the garment which may lead to a mismatch with Trendtex’s identification of the colorway of the fabric from which the garment was produced.

C.1 – Mislabeling the colorway

46. There are numerous instances of NTKN mislabeling the color for its products. Some examples are displayed below in **Table 1**. In these examples, the colorway in the product description does not reflect the color of the garment.

Table 1	
<div><p>BAL-483 W 100% Cotton \$11.00</p><p>[NTKN 540]</p><p>Description is “W” but shirt is not white</p></div>	<div><p>BAL-418 W 100% Cotton \$11.00</p><p>[NTKN 540]</p><p>Description is W but shirt is not white</p></div>

53. NTKN’s mislabeling of colorways also underscores the possibility that it has mislabeled the type of fabric associated with its various products. Ms. Young’s report does not take this into account.

D. Ms. Young’s Report fails to address or account for the subjective nature of labelling colors.

54. Trendtex and NTKN appear to have taken an imprecise approach to identifying and labeling the colorways for their respective goods. This practice is not uncommon in the apparel industry in Hawaii, which tends to be less rigid than in other locales across the United States. Because of the subjective nature of naming colors, this approach has led to contradictory categorizations of colorways. As a result, the written description or identification of the colorway for a garment produced by NTKN may not match Trendtex’s identification of the colorway of the fabric from which the shirt was produced.

55. For example, the prominent garments in the images below (**Table 4**) are all identified as NB or Navy Blue. However, there are significant variations in the color of the respective garments.

Table 4		
 <p>AL-465 NB 100% Cotton \$15.00</p>	 <p>AL-464 NB 100% Cotton \$15.00</p>	 <p>AL-434 NB 100% Cotton \$15.00</p>
NTKN 0000518	NTKN 518	NTKN 519
 <p>AL-411 NB 100% Cotton \$15.00</p>	 <p>AL-383 NB 100% Cotton \$15.00</p>	 <p>AL-354 NB 100% Cotton \$15.00</p>
NTKN 519	NTKN 520	NTKN 520

F. Ms. Young's Report fails to account for textile and fashion industry norms specific to Hawaii.

70. In her Report, Ms. Young fails to consider the circumstances of textile manufacturing and retailing in Hawaii specifically. Instead, Ms. Young appears to apply standards and assumptions that might apply to manufacturing and retailing in mainland U.S. but that might not apply in Hawaii.
71. For example, Ms. Young does not acknowledge or account for the general differences in record-keeping or documentation practices between mainland United States and Hawaii.
72. As a result, in Hawaii, it is not uncommon for a garment company to have little or no documentation for print histories, purchases, sales, returns, inventory, design process, source of material, or date of receipt of material.
73. In Hawaiian fashion manufacturing and retailing, it is common for leftover fabrics from prior seasons, samples, or other non-production sources to be preserved. This leftover fabric is often given to employees. or if there is a large quantity, can be sold wholesale.
74. Long periods between the purchase or acquisition of fabric and the subsequent manufacture of the fabric into finished goods are not uncommon in Hawaii. Apparel retailers do not follow the typical purchase patterns of companies focusing on current trends. Some of the trends in aloha shirts and other forms of aloha attire have been virtually unchanged for decades. Because Hawaiian prints stay in style for long periods, purchasing or stockpiling large quantities to use over an extended period is a common strategy for Hawaii retailers.
75. In her Report, Ms. Young appears to incorrectly assume that "just in time" production, which has become standard in the mainland United States, applies in Hawaii. "Just in time" (or JIT) production is a management and production strategy aimed at increasing efficiency and decreasing waste by only receiving fabric and goods as needed for production and not stockpiling goods and materials in inventory. In Hawaii, JIT production is a relatively new approach and is generally only used by larger companies seeking to make timely resort wear aimed at a national audience. By contrast, most smaller retailers rely on traditional strategies. While fashions

in the rest of the United States change very rapidly—generally four times annually—traditional Hawaiian designs change more slowly, often every few years rather than months. This allows Hawaii’s traditional manufacturers to acquire and stockpile large quantities of materials when prices are favorable and incorporate them slowly into the business.

76. In my experience, it is common for a company (like NTKN) to buy and stockpile fabric until needed and then manufacture a few garments at a time, as needed, over the following years. This is a common strategy for smaller manufacturers and retailers in Hawaii. I understand NTKN employs this practice and continues to have excess fabric purchased from Hawaiiiprint and Trendtex in its inventory as shown in documents provided to me, including an inventory record (NTKN0000622) and photographs of rolls of fabric that I understand have been produced in this litigation.
77. Many retailers have transitioned to a more “direct-to-consumer” approach through online sales. In these instances, the garments may not actually be produced until the sale is made. I understand NTKN added direct-to-consumer online sales in response to the restrictions caused by the COVID pandemic. I also understand that NTKN manufactures and sells garments on an on-demand basis.
78. Additionally, the terminology used in the portions of the Print History provided by Ms. Young in her report may indicate excess production. For example, Ms. Young includes a portion of the “73627 Print History” which indicates that Order No. 73497 for that design was “CANCELED.” This is a commonly used method to indicate excess production of fabric for this design. The colorways for this cancelled order are not identified.

G. Ms. Young’s Report does not adequately account for print variations caused in the screenprinting process.

79. In her Report, Ms. Young fails to account for the variations in resulting prints that can occur during the screenprinting process, particularly hand printing methods or methods that involve potentially variable pressure as the dye is pushed through the screen onto the fabric. The Report acknowledges that variable pressure applied during the printing process could cause “fluctuations,” but concludes that such variations would be “miniscule.” [Young Report, ¶ 16]. The Report also concludes that “the

variations found in the Defendant's work is beyond the realm of reasonable variations or differences" caused by variations in print pressure. [Young Report, ¶ 22]. These conclusions reference variable print pressure but dismiss it without actually analyzing this possible source of variation. As such, when the Young Report states that "[s]creen pressure has been considered in this analysis," I must respectfully disagree. [Young Report, ¶ 110].

80. Inconsistent pressure against the squeegee, the viscosity of the dye, and the cleaning and drying of screens between uses can all result in variations of the resulting print, even if the screen is the same. Such differences can include variations in color saturation, shading, location, density, and shape of the applied dye.
81. The result is that garments produced from fabric from the same run may have variations between them resulting from differences in pressure during the different applications of dye. Additionally, shirts produced from fabric produced from different runs may also have variations, even if the same screen was used.
82. In her Report, Ms. Young concludes that certain "differences are not a function of uneven printing processes; these are a function of different screens and different print houses." [Young Report, ¶ 75]. Ms. Young also states that certain variations are "not the product of poor printing practice, this is an entirely different engraving or screen, from a different print house." [Young Report, ¶ 77].
83. Respectfully, I disagree with those assessments. The screen printing process allows for errors or variations in printing consistent with those that Ms. Young has identified in her Report. These printing variations stem from varying viscosities of the dye applied, different pressure applied as the dye passes through the screen, or whether screens are adequately cleaned and dried between uses. The humidity and conditions in the printing facility can also impact the consistency of the prints from the same screen.
84. From my analysis, the alleged differences identified in relation to Subject Products 458, 459, 470, and 819 are consistent with variations resulting from uneven pressure applied to the squeegee while moving dye across the screen.

85. I also disagree with Ms. Young's assessment that "printing is a precise art – these variations can only occur from a different set of screens, from a different company." [Young Report, ¶ 88]. While roller printing is a more precise process, screenprinting by hand has a high potential for human error. In such processes, even a sneeze can cause variations even if the same screen is used.
86. I also disagree with Ms. Young's assessment that "there is no way to overdye or modify the color once dyed." [Young Report, ¶ 30]. Most screen prints start with pure white fabric and all color is applied by dye during the printing process. However, screenprinting can be accomplished using fabric that has already been dyed a plain light color. In these circumstances, additional color or dye can be applied to the colored fabric following the usual process.
87. Some of the designs at issue have 12-15 different colors. For example, the image below (from paragraph 73 of Ms. Young's report) appears to have 15 different colors (as represented by the colored rectangles at the bottom of the image). These indicate the different color dyes applied at different stages in the printing process. As the number of different dyes increase, the opportunity and likelihood of variations also increases.



[Paragraph 73 of Ms. Young's Report]

VI. Conclusions

88. I disagree with Ms. Young's ultimate conclusion that "the suggestion that the Defendant's designs are actually made with the Plaintiff's fabric is ludicrous and a transparent attempt at obfuscation." [Young Report, ¶ 111].
89. Ms. Young's Report does not explain the underlying assumptions, methodology, or sources of information that she relied on for her analysis. As such, I am unable to accept or agree with her ultimate conclusions.
90. Ms. Young's Report also overlooks or fails to properly account for multiple considerations which, when properly evaluated, point to plausible explanations for the perceived differences in the colorways, fabric, and designs.

Dated: December 20, 2023

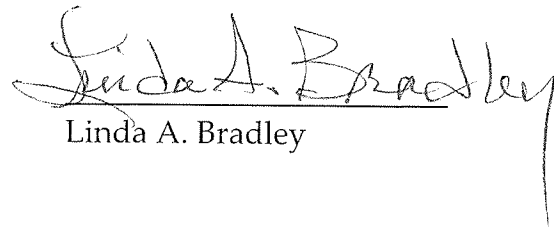

Linda A. Bradley

EXHIBIT 6

**TRENDTEX FABRICS, Limited**

1928 Kalani Street • Honolulu, Hawaii 96819-3270 • (808) 842-1356

INVOICEInvoice Number **T46389****Sold To:**Ky's International Fashion
819 Moowaa Street Rm 207
Honolulu, HI 96819

1161

Date of Invoice **JAN 02 2008**Terms **Net 60****Pay this invoice to Trendtex Fabrics**Purchase Order **21641**Salesperson **Donna**Customer Order **12639**

Ship To

Vessel: Ikoma V19 (L1)**Vessel ETA 12/22/2007****Print Name: 205T Batik Panel Hibiscus 805**

Color	Quantity	Design	Description	Price	Extension
21641 (Sage)	839.5	KS-6919R	Cotton Poplin	\$1.92	\$1,611.84
21641 (Blue)	2755.7	KS-6919R	Cotton Poplin	\$1.92	\$5,290.94
21641 (Natural)	1048	KS-6919R	Cotton Poplin	\$1.92	\$2,012.16

PAID
2/27/08
x 21883

Invoiced Yds **4,643.2**

Total: 10 Cartons (82 Pcs)

Ctn# 1-10

See attached packing list for details

Arrived via Ikoma V19 ETA: 2007-Dec-22

Sales Tax	
Frt Charges	
Grand Total:	\$8,914.94

RECEIVED BY _____**DATE** _____

A SERVICE CHARGE OF 1-1/2% PER MONTH WILL BE CHARGED ON PAST DUE ACCOUNTS. (ANNUAL PERCENTAGE RATE OF 18%.)
A SERVICE FEE WILL BE CHARGED FOR ANY RETURNED CHECKS.

ALL CLAIMS MUST BE MADE WITHIN 20 DAYS OF RECEIPT OF GOODS. CUT PIECES ARE NOT RETURNABLE. NO RETURNS ACCEPTED WITHOUT PRIOR AUTHORIZATION.

U.S. Custom regulations require anyone performing "repacking" for fabric retail sales clearly mark each item in a conspicuous place as legible, indelible, and permanent, the country of origin of the goods.

T/C Blends are printed by pigments that are fixed onto the fabric by binding resins. Pigment prints are all subject to fading after wash. We do not guarantee fastness.

**HAWAIIPRINT, INC.**

916-B Kaaahi Place
Honolulu, HI 96817
Ph. 808-847-4414
Fax 808-847-1688

Sales Order

Date	S.O. No.
4/23/2010	672624

Name / Address
KY INTERNATIONAL FASHION, INC. 819 MOOWAA STREET #207 HONOLULU, HI 96817

Ship To

452

P.O. No.	Rep	Terms	Request Date
73096-A	MA	3% CASH	5/3/2010

Item	Description	Ordered	U/M	Rate	Amount
73096	"WAIMEA SURF"				
73096 61	COTTON POPLIN FACE				
73096 35	RED	1,116	yd	2.03	2,265.48T
73096 25	AQUA	1,108	yd	2.03	2,249.24T
	PERIWINKLE	1,160	yd	2.03	2,354.80T
	INTACT CTN#1-6 PORTION A				
DISCOUNT					6,869.52
	Sales Tax			-3.00%	-206.09
				0.50%	33.32
RECEIVED BY:		Total			\$6,696.75

PAID
5/3/10
29612

**HAWAII PRINT, INC.**916-B Kaaahi Place
Honolulu, HI 96817

Ph. 808-847-4414

Fax 808-847-1688

Invoice

Date	Invoice #
8/26/2010	61205

Sold To
KY INTERNATIONAL FASHION, INC. 819 MOOWAA STREET #207 HONOLULU, HI 96817

Shipped To

PAID

820

P.O. Number	Terms	Delivery Date	Rep	S.O. No.
73138	3% CASH	8/26/2010	MA	672864

Quantity	Item Code	Description	U/M	Price Each	Amount
1	73138	"EWA HIBISCUS"			0.00T
1,148	73138 81R	100% RAYON POPLIN, 100X80, 40X40, WIDE	yd	2.70	3,099.60T
1,028	73138 79R	BLACK	yd	2.70	2,775.60T
1,065	73138 11R	WINE	yd	2.70	2,875.50T
		WHITE			
		6 INTACT CTNS. #19-24			
	DISCOUNT			-3.00%	8,750.70 -262.52

PAID IN FULL. THANK YOU VERY MUCH!

Subtotal	\$8,488.18
Sales Tax (0.5%)	\$42.44
Total	\$8,530.62

**HAWAIIPRINT, INC.**

740 Kohou Street
Honolulu, HI 96817
Ph. 808-847-4414
Fax 808-847-1688

Sales Order

Date	S.O. No.
10/7/2011	674139

Name / Address
KY INTERNATIONAL FASHION, INC. 819 MOOWAA STREET #207 HONOLULU, HI 96817

Ship To

481

P.O. No.	Rep	Terms	Request Date
73454	MA	3% CASH	2/17/2012

Item	Description	Ordered	U/M	Rate	Amount
73454	"TWO WHEELER"				0.00T
	100% COTTON POPLIN, 133X72, 40X40, 44/45"				
73454 24R	SLATE	1,133	yd	2.97	3,365.01T
73454 33R	SAGE	1,129	yd	2.97	3,353.13T
73454 26R	ROYAL	1,126	yd	2.97	3,344.22T
	6 INTACT CTNS. #1-6				
DISCOUNT				-3.00%	10,062.36
	Sales Tax			0.50%	-301.87
					48.80
RECEIVED BY:		Total		\$9,809.29	

PAID
Pd
2/21/12
9809.29
31226



819 Moowaa street #207 Honolulu Hawaii 96817 Email: sales@kyifi.com

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MILSON
By Ky's
MADE IN HAWAII U.S.A.

Tel: 808-853-2228 Fax: 808-853-2236 www.kyifi.com

Hawaiian Border Design Shirts



SIZE: S, M, L, XL \$16.00 2XL, 3XL-\$17.00 4XL-\$22.00 6XL-\$26.00 8XL-\$31.00

**COLOR : R=RED, NB=NAVYBLUE, BL=BLUE, G=GREEN, OR=ORANGE, Y=YELLOW, W=WHITE, CR=CREAM
P=PINK, PP=PURPLE, GA=GREY, B=BLACK, TU=TURQ, OL=OLIVE**